FILE COPY

Office - Supreme Court, U. S.
FILED
JUN 15 1948
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1947

No. 810

other papers not printed

PAYSOFF TINKOFF,

Petitioner,

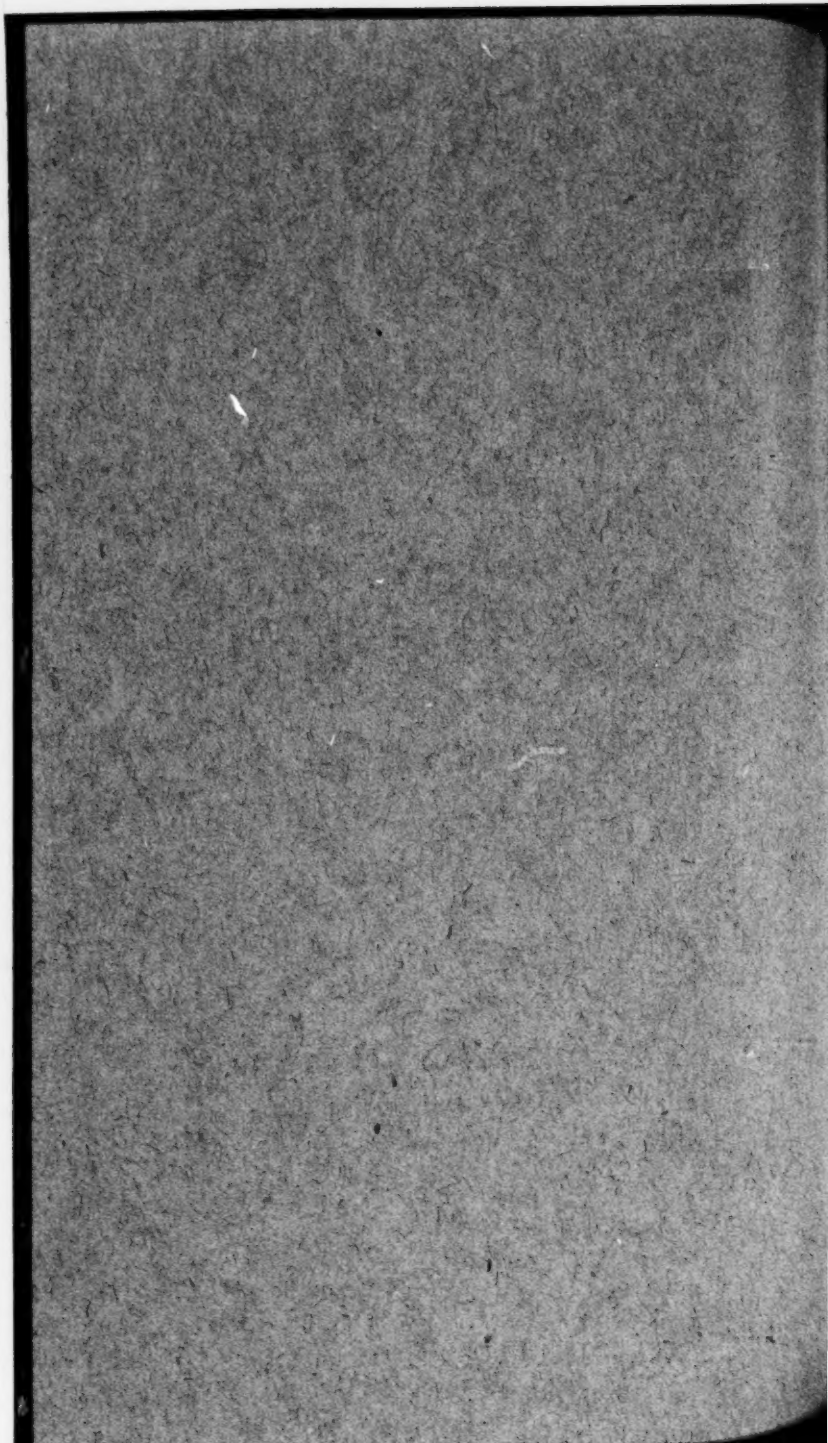
vs.

PEOPLE OF THE STATE OF ILLINOIS, ex rel., Chicago Bar Association, by Erwin W. Roemer, et al., its Officers and Members,

PETITION FOR REHEARING.

ODE L. RANKIN,
Counsel for Petitioner.

UNITED STATES LAW PRINTING CO., PHONE LAKEVIEW 0351, CHICAGO.



IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1947

No. 810

PAYSOFF TINKOFF,

Petitioner,

VS.

PEOPLE OF THE STATE OF ILLINOIS, ex rel., Chicago Bar Association, by Erwin W. Roemer, et al., its Officers and Members,

PETITION FOR REHEARING.

To the Honorable, the Justices of the Supreme Court of the United States

Now comes Pasoff Tinkoff, petitioner, by Ode L. Rankin, his attorney, and prays the Court that it reconsider the record and its order entered on June 1, 1948, as follows:

> The motion for a stay is denied. The petition for Writ of Certiorari is also denied. Mrs. Justice Jackson took no part in the consideration or decision of these applications,

and grant a rehearing of the cause and for reasons suggests to the Court as follows:

STATEMENT.

This cause was presented to the Court in typewritten form by petitioner, and, upon representation by petitioner that he was not financially able to advance to the Clerk of this Court the sum required with which to print the record, this Court, in its desire to turn no litigant away unheard, promptly considered the merits of the matter upon the record as filed, and entered the above order denying the petition.

Heretofore petitioner had been endeavoring to represent himself in this proceeding; that, fearing he has not fully presented the record to this Court and sincerely believing that the judgment of the Supreme Court of Illinois is erroneous and unjust and has deprived him of due process of law he has sought and obtained the services of a member of the bar of this Court to state and present this petition to the Court.

The facts giving rise to the legal questions on the record are now printed and stated here for convenience inasumch as neither the record nor the original petition are printed.

Summary State of Matter Involved.

This provision is a petition for certiorari to the Supreme Court of Illinois for its record in an original proceeding for contempt filed in that Court for alleged unauthorized practice of law by petitioner in the Superior Court of Cook County, Illinois, and outside of Court.

The Information.

The original information was filed in the Supreme Court of Illinois on relation of the Chicago Bar Association and its committee on unauthorized practice of law charging petitioner with practice of law in Cook County, Illinois, without a license.

Petitioner moved to strike the information and for leave to argue the motion orally which was denied on May 13, 1947.

The Answer.

Petitioner answered said information and the Court ordered briefs filed under the rules of the Court and the cause was submitted on briefs by the parties at the November 1947 term of the Illinois Supreme Court.

The Judgment.

At the January, 1948 term of the Illinois Supreme Court, and on January 22, 1948, the Supreme Court of Illinois filed its opinion in said cause (*The People* v. *Tinkoff*, 399 Ill. 279) and entered said judgment against petitioner, adjudicating him to be in contempt and assessing against him a fine of $500 and costs.

A petition for rehearing was filed in the Illinois Supreme Court, which was on March 11, 1948, denied.

The cause was heard on information and answer.

The opinion of the Illinois Supreme Court notes that the motion to dismiss raised a question of law as to whether the acts charged were sufficient to show that petitioner was practicing law; and said that

> "the issues raised by the answer are not materially different from those raised by the motion to dismiss, and the discussion of the facts will be confined to those admitted by respondent's answer to be true" (P. 284).

The Opinion was not confined to petitioner's admission.

A comparison of the opinion with the Information and the Answer shows that in petitioner's answer there are several denials of the Information and that the Court in its opinion treated certain of those matters as admitted, when, in fact they were denied. In other words the Court treated contested matters as admitted and rendered its opinion and judgment on matters which the record shows were denied and hence did not exist for adjudication.

Petitioner contends here that the Supreme Court of Illinois has rendered its judgment upon disputed evidence upon which petitioner was entitled to have the rule to show cause discharged, and that there is no basis for finding beyond reasonable doubt that petitioner is guilty as charged, or at all.

I.

It was a denial of due process of law for the Supreme Court of Illinois in this criminal contempt case to enter its penal judgment upon matters of fact not admitted by petitioner.

It is pointed out that this is a criminal contempt matter where denials of the petitioner purge him of the contempt charged. The rule in Illinois is that,

> "in criminal contempts alleged to have been committed out of the presence of the Court if the contemnor's answer is sufficient to acquit of the charge he must be discharged" (*Oster* v. *The People*, 192 Ill. 473, 479).

In that case the general charge against Oster was explicitly denied and the matters brought out on the hearing upon which the judge entered the rule were denied.

The Court there said that the respondent had

> "filed an answer, which standing alone purged him of the alleged contempt and constituted a full defense to the charge of contempt alleged to have been committed out of the presence of the Court." (P. 478.)

The Court also remarked in the *Oster* case that:

> "No interrogatories were filed to which more specific answer could have been required, as might have been done if the answer was not regarded as sufficiently definite as to the *factum* of the contempt." (P. 477.)

The Illinois Supreme Court in this case, obviously recognizing the rule, and noting the issues raised by denials in the answer stated,

> "the discussion of the facts will be confined to those admitted by respondents answer to be true." (P. 284).

Facts denied mistakenly treated as admissions.

But, it is pointed out that the Illinois Supreme Court did not, in reaching its judgment, confine its discussion and opinion to admissions of petitioner but based its judgment upon matters disputed, as we show hereafter.

A.

It is alleged in the Information that petitioner filed a "petition to remove a cloud," in the Superior Court of Cook County entitled *Paysoff Tinkoff, Jr.*, by *Paysoff Tinkoff, his next friend and lawful guardian, assignee, etc.*

v. *Guthaus, et al.,* and another suit called a "Bill for accounting" in the Superior Court of Cook County entitled *Paysoff Tinkoff, the next friend and lawful guardian of Papsoff Tinkoff, Jr., assignee, etc.* v. *Eckhoff, et al.;* and that "through the subterfuge of an assignment, has been practicing law without having a license so to do."

As to those points pettiioner answered that they were instituted by petitioner in his representative capacity under valid contracts, and denies they were a sham and subterfuge; and says that in each proceeding motions were made objecting to petitioner representing himself and that the Chancellor held that pettiioner had a right to appear for himself in such suits, under the statute, in his individual and representative capacity.

The Illinois Statute, Chapter 13, Section 11 pertaining to attorneys and counsellors provides:

> "Plaintiffs shall have the liberty of prosecuting, and defendants of defending in their proper persons, * * *."

Certainly the filing of those suits and prosecution thereof under the eye and by consent of the Court by plaintiff personally could not be a contempt of the Superior Court, and if not, by the same token, it would not be of the Supreme Court; and hence the filing of those suits did not constitute the practice of the law; for all that is said petitioner is not shown as acting in the character or role of an attorney.

B.

It is alleged that petitioner drafted a notice of rescission of a real estate transaction for persons named Harles.

The *answer* shows this was an isolated matter although the Supreme Court of Illinois does not treat it as such. It

was drafted on March 30, 1946, as an accomodation, while petitioner was aiding the Harleses prepare their income tax return. It is signed by the Harleses, not personally, but by petitioner at their request. Petitioner did not pretend to be signing it as a lawyer; he distinctly negatived any idea that he was a lawyer. He signed their names by himself as a real estate agent.

The Information alleges that petitioner, pursuant to a conference with the Harleses, drafted a notice entitled "Recision of Oral Contract and Warranty Deed executed on Sunday, February 24, 1946 by Peter Harles and Christine Harles" (Exhibit B to Information). Examination of this document shows that it is not a notice of petitioner but is signed by the Harleses by Paysoff Tinkoff. It is respectfully suggested that writing a letter for some other person to sign as their own is not practicing law even though it be a document with legal phraesology. In drafting the document, petitioner was accommodating the Harleses and was not representing any one. The notice is given by the Harleses—not Tinkoff; and it is suggested that the name of any person may be signed by his authority.

Of course it happens here, that petitioner, though a layman, has a legal vocabulary; but the statements made are by the Harleses, and Tinkoff only supplied the words. Concerning this notice the Opinion of the Supreme Court of Illinois says "Respondent was practicing law when he counseled with the Harleses in reference to said notice and was so engaged when he drafted it (p. 289). The answer of petitioner, however, distinctly denies that he was so acting and sets out that the Harleses were told that petitioner could not engage in the practice of the law; and that petitioner made no charge for the drafting of the notice.

The drafting of that notice was an isolated matter, not connected with anything at the time other than an income

tax return. Any layman with a legal education could have done the same thing without being charged with practicing law without a license. The signature of the Harleses by Tinkoff shows he was not signing it in the character of a lawyer. It was, in legal effect, signed by the Harleses themselves. It was on the letterhead of the firm as tax accountants and signed as "Real Estate Agent".

The Supreme Court had no right to rely upon such documents as an admission of practice of law. But notwithstanding such denials and facts shown surrounding the transaction the Supreme Court of Illinois says

> "Respondent was practicing law when he counseled with the Harleses in reference to said notice and was so engaged when he drafted it" (p. 289).

But we point out that said notice was drafted on March 30, 1946 and the last prior transaction shown by the information, was the filing of the suit on April 20, 1945, over a year prior to the drafting of said notice; and the next transaction alleged was on August 31, 1946, five months later,—thus, this one matter within seventeen months interim is classed as the practice of law. And that statement of the Supreme Court was made in face of the statement of petitioner in his answer that he

> "denies that he gave any legal advice to Peter Harles and Christine Hasles, regarding the validity of warranty deeds, but had to obtain information relating to the transfer of the property by the said Peter Harles and Christine Harles so as to determine whether there was a completed transaction for income tax purposes,"

and to determine if they had a taxable profit or loss on the transaction. Petitioner was not advising, he was asking.

It is respectfully suggested that petitioner's admissions do not support the conclusions found in the Opinion of the

Illinois Supreme Court, but that on the contrary the answer specifically denies the allegations upon which the Supreme Court bases its opinion.

C.

The other matter considered by the Supreme Court of Illinois in its Opinion

> pertains to what he (petitioner) did in the actions filed in court" (p. 289).

The court says that an order was made to take the depositions of the Harleses; that they appeared to give their depositions and that petitioner appeared on behalf of said witnesses, made numerous objections, and advised the witnesses with reference to their answering certain questions put to them, and that the witnesses relied upon his advice and refused to answer questions; that a rule was entered on the witnesses to show cause and on the hearing petitioner appeared made numerous objections and examined the witness Peter Harles.

What the Supreme Court recites as happening is as is alleged in the information and no notice is taken in the opinion of denials and explanations made in petitioner's answer.

In his answer petitioner denies that he appeared on behalf of said witnesses or acted as a representative of said witnesses and said he so specifically informed the court and stated in the record that he was not representing the witnesses, but only himself, and that any and all objections made during the taking of the depositions were made by him to protect his own interests as he of right might do under the statute; that the purpose of taking the depositions was solely to determine the contractual relations between him and the witnesses Peter Harles and Christine Harles, who were not parties to said suit, and that he objected to the procedure. The depositions were being taken against him.

Petitioner also alleged that after this information was filed in the Illinois Supreme Court he withdrew as attorney *pro se* in one pending suit, and filed a motion in another suit calling attention of the court to the filing of this information; but that the trial court refused to entertain the motion on the ground that

> "under the statute the respondent had a right to appear in his own behalf in his personal and representative capacity".

Petitioner answering further stated that the excerpts from the testimony of Peter Harles was not a true statement of his testimony.

Petitioner denied that the assignment and contract were a sham and a subterfuge devised to allow him to practice fraud, but alleged said documents were valid and binding and supported by valid consideration.

Petitioner further stated that in each of the said proceedings in the Superior Court, the court, on motion made by defendants objecting to petitioner representing himself, ruled that "respondent had the right to appear for himself under the statute in his individual or representative capacity".

Petitioner further denied that he had at any time held himself out to the public as being qualified to perform legal services; denied that he was practicing law; said that he had at all times stated to all persons seeking his services that he had been disbarred from practice; said that he had received no remuneration for any services of a legal nature directly or indirectly since he was disbarred; denied that he had practiced law directly or indirectly or charged for or collected any consideration for services and stated that he had not violated any rules and was not in contempt of court and hence could not be punished for contempt.

Thus it is seen that the Supreme Court relied upon allegations found in the information which were specifically and categorically denied, and nothing is left to support the assumptions and conclusions of the Supreme Court of Illinois. The admissions of the skeleton of facts does not admit that petitioner was in his conduct, guilty of contempt.

II.

The Opinion of the Illinois Supreme Court is based upon disputed evidence and the answer overcomes the information.

It is obvious that the Supreme Court of Illinois has based its opinion on disputed allegations and that it is not supported by any admitted facts, and that there is no proof of guilt beyond a reasonable doubt to support the fine herein assessed.

While the trial courts may not, of course, assume to usurp the jurisdiction of the Supreme Court in the matter of contempt, as the Opinion of the Supreme Court of Illinois says, yet the recognition by the trial judge of the Superior Court of the right of petitioner to represent himself in his representative and personal capacity takes away any suggestion of contempt in the prosecution of the litigation in question. The sanction of the procedure by the trial court asserts the good faith of petitioner here.

Why should a litigant be ground out between the two millstones because of a difference of opinion, when he relies on the court in which the action pends, and the other court has not spoken?

We respectfully suggest that the action of the Supreme Court is arbitrary and does not have a sound basis for its

conclusion; and having based its conclusion on disputed facts, where the law calls for admitted facts, it cannot be said to be supported by proof beyond reasonable doubt. Disputes are doubts.

III.

Where a record shows that the judgment has no basic support in the evidence it is so far devoid of judicial characteristics as to be without due process of law.

Where the proceeding is original in the Supreme Court of Illinois a litigant can have no appeal from an adverse judgment no matter how erroneous. His only help is from this court where some constitutional question can be shown in the record. If there be such question upon the record fairly appearing this court should grant relief.

It is the rule of this court that where it is asserted that a person has been deprived by a State court of a fundamental right secured by the Federal Constitution an independent examination of the facts by the Supreme Court may be made (*Craig* v. *Harney,* 331 U. S. 367, 373-4).

Due process lacking.

Here the Supreme Court of Illinois has so far ignored the rules of procedure in contempt cases as to deprive petitioner of due process of law. He is a layman, and his right to prosecute his rights *pro se,* both under common law and the statute, has been denied to him; and not only denied to him but he has been fined $500 and costs on a record in which no contempt appears.

It is therefore suggested that this court should reconsider its order denying the petition for certiorari and bring up the record of the Supreme Court of Illinois and make an independent examination of the facts in the record.

Wherefore, petitioner by his counsel prays the court to reconsider its opinion to the end that the cause may be reheard, the judgment reversed, the certiorari granted and the cause considered here upon its merits.

Respectfully submitted,

ODE L. RANKIN,
Counsel for Petitioner.

Certificate of Counsel.

I, Ode L. Rankin, as counsel for petitioner in the foregoing Pettiion for Rehearing, do hereby certify that the foregoing Petition is presented in good faith and that I believe that the points presented are worthy of consideration and that this Petition is not presented for delay.

I hereby certify also that the presentation of the facts and points raised by the record are made for the convenience of the court for the reason that neither the record nor the petition for certiorari had been printed.

Ode L. Rankin,
Counsel for Petitioner.